

Remarks

The Office Action dated August 23, 2007 has been carefully reviewed and the foregoing amendments are submitted in consequence thereof.

Applicants believe that no extension of term is required and that no additional fee for claims is required. If any additional fee is required for an extension of term or claims, the Commissioner is hereby authorized to charge Deposit Account No. 01-2384.

Claims 47-87 are now pending in the present application, of which claims 74 and 77 have been amended. It is respectfully submitted that the pending claims define allowable subject matter.

A. The § 112 Rejections

The rejections of claims 74-85 under 35 U.S.C. § 112, first and second paragraphs is respectfully traversed. Claims 74 and 88 have been amended in a manner that renders the rejections moot. Applicants submit that the amendments to these claims are made solely for the sake of expediency and are not made in acquiescence with the substance of the rejection as set forth in the Office Action. Applicants also submit that these amendments do not result in a substantive change in the scope of claims 74 and 88, as the recitation of "a curved arm" is considered to encompass a single arm or multiple arms, as later dependent claims also make clear. Applicants request that the rejections to claims 74-85 be reconsidered and withdrawn.

B. The Section 103 Rejections

Applicants will now consider the prior art rejections in the order set forth in the Office Action.

1. Lu '344 in view of Miyoshi

The rejection of claims 47-50, 52-64, 66-76 and 78-85 under 35 U.S.C. § 103(a) as being unpatentable over Lu (U.S. Patent No. 6,508,344) in view of Miyoshi is respectfully traversed.

The rejection of these claims is believed to be overcome on two alternative bases. First, the Lu '344 reference is not "prior art" that can be used to reject the present claims. Second, regardless of whether Lu '344 is or is not "prior art", the cited combination of references does not render the claimed inventions obvious. Each of the two bases for overcoming the rejection are discussed below.

a. The Disqualification of Lu '344 as Prior Art

Applicants position, fully set forth in Applicants' previous responses, that Lu has been adequately disqualified as prior art under either of 37 C.F.R. §§ 1.131 and 1.132 that can be used to reject the claims is generally maintained. The present Office Action provides no reply to Applicants' position on these issues, but nonetheless continues to assert the Lu '344 reference.

To remove the reference from prior art that can be cited against the claims under Rule 1.132 in the present circumstances, Applicants need only to show that that the relevant disclosure in Lu is a description of Applicant's own work. Riverwood International Corp. v. R.A. Jones & Co., 66 USPQ2d 1331, 1338 (Fed. Cir. 2003). Applicants have certainly complied with this standard, and 1.132 submissions have been upheld by the courts having a lesser evidentiary showing than Applicants have supplied in the present case. See In re Debaun, 214 USPQ2d 933 (CCPA 1982).

Applicants once again note, that M.P.E.P § 716.10 provides that an uncontradicted, unequivocal statement in a 1.132 submission that the Applicants invented the subject matter disclosed in a reference, which has been provided in the present case, will be accepted as establishing inventorship. Absent some evidence to contradict the 1.132 declaration, which the Examiner has not supplied and which Applicants do not believe exists, the Office should accept the 1.132 declaration. Applicants again respectfully request that that if the examiner is aware of any information or evidence that calls the factual assertions of the declaration into question that such information or evidence included in the next communication for Applicant's consideration and reply. Otherwise the declaration should be accepted and any rejection that relies on Lu '344 should be withdrawn in light of the 1.132 submission and evidence that the Lu disclosure is a description of the Applicants' own prior work.

b. Lu '344 and Miyoshi do not render the present claims obvious.

Notwithstanding the above, Applicants submit that Lu in view of Miyoshi does not present a prima facie case of obviousness, and the combination is not suggestive of the present invention.

The United States Supreme Court has recently held that obviousness rejections must be supported with “articulated reasoning with some rational underpinning to support the conclusion of obviousness.” See KSR International Co. v. Teleflex, Inc., slip Opinion at page 14. The present rejection does not appear to meet this standard as it reflects no articulate reasoning *why* the independent or dependent claims are believed to be obvious, but rather simply rejects the claims in the form of a conclusion of obviousness. Applicants accordingly request specific explanation and articulation regarding the reasoning and rational underpinning for any obviousness rejection of the claims. It is not believed that adequate reasons *why* the presently claimed invention is believed to be obvious have been provided on the present record.

Applicants submit that the presently claimed invention is not obvious over Lu '344 in view of Miyoshi. The combination of Lu '344 and Miyoshi do not teach of the recitations of the present claims. For example, independent claim 47 recites a towing handle pivotally connected to a distal end of an arm, the towing handle configured to pivot about the center axis at the distal end of the arm and otherwise unable to move relative to the distal end. The Lu '344 handle, as shown in Figures 5 and 6, is pivotal about a first center axis (6) shown in Figure 5, *and is* movable about a second axis extending perpendicular to the axis (6) as shown in Figure 6. The movement shown in Figure 6 of Lu'344 is expressly precluded by the language of claim 47. Miyoshi provides no disclosure or teaching to cure this deficiency, and in fact does not disclose a rotatable handle at all and therefore adds nothing to the teaching of Lu '344 with respect to claim 47.

Independent claim 61 recites the towing handle “fixedly mounted to the distal end along an axis extending generally perpendicular to the center axis while being configured to pivot generally about the center axis at the distal end of the arm.” Lu '344 is not fixedly mounted along an axis perpendicular to the center axis of the bars (11), but rather is movable about the

perpendicular axis as illustrated in Figure 6. Miyoshi provides no disclosure or teaching to cure this deficiency, and in fact does not disclose a rotatable handle at all and therefore adds nothing to the teaching of Lu '344 with respect to claim 61.

Independent claim 74 recites "at least one curved arm slideably received within the non-extendable portion and movable relative to the non-extendable portion along a curved telescoping path between a retracted position and an extended position." Lu '344 does not disclose that the bars (11) are movable along a curved telescoping path, and Miyoshi does not cure this deficiency because it describes an incompatible construction that is believed to teach away from the recitations of claims 47, 62 and 74. Applicants wish to point out that the United States Supreme Court has also recently noted that when the prior art teaches away from combining certain elements, a combination of those elements is more likely to be nonobvious. See KSR International Co. v. Teleflex, Inc., slip Opinion at page 14. As the Federal Circuit has explained:

A reference may be said to teach away when a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant.

In re Gurley, 31 USPQ2d 1130 (Fed. Cir. 1994). The reliance upon Miyoshi appears to be particularly suspect from this perspective for certain of the presently rejected claims.

For example, independent claim 47 recites that the axial length of the arm is "curved outwardly away from the piece of baggage when in the extended position so that the distal end is laterally spaced a further distance measured from a center axis of the piece of baggage than the proximal end." Claim 62, depending from independent claim 61, recites that the arm includes a curved portion "moving along a curved telescoping path between a retracted position and an extended position, the distal end of the arm being positioned forward of the baggage and not positioned over the baggage when the arm is in the extended position." Independent claim 74 recites "at least one curved arm slideably received within the non-extendable portion and movable relative to the non-extendable portion along a curved telescoping path between a retracted position and an extended position" and "the towing handle being positioned forward of the base and not positioned over the base when the at least one arm is in the extended position."

Miyoshi teaches away from the presently claimed invention of at least claims 47, 62 and 74 by teaching a structure opposite to the recitations of these claims. That is, the distal end of the curved arms disclosed in the embodiments of Miyoshi depicted in Figures 5, 6, 9 and 10 are curved toward the center axis of the depicted bags such that a distal end of the arms is closer to the center axis of the bag when in the extended position than the proximal ends of the arms. Specifically, Miyoshi discloses that:

As shown in Figures 5 and 6, the three segment extensible rods 55 are curved so that the grip 53A when fully extended upwardly, is positioned at the middle of the bag upper face between the left and right sides of the bag body 54.

See Miyoshi col. 4, lines 53-57. Miyoshi teaches the construction of the curved arms is significant in that:

The grip can be placed at the middle between the left and right sides of the bag body. For this reason, the extensible rods of the handle are placed in a location where they will not interfere with placement of the items in the bag interior, and the object of providing a bag which can be easily moved in any direction while lightly holding the grip is realized.

See Miyoshi col. 3, lines 20-26.

Miyoshi further disclose that:

The handle 53 is locked in the pulled-out position so that one can lean on the grip 53A while easily moving the bag supported by casters 51 by push[ing] the bag while leaning on the grip 53A, that is to say the bag can function as a walking stick.

See Miyoshi col. 5, lines 48-52.

It is therefore clear from the Miyoshi reference that the curvature of the Miyoshi handle rods was deliberately chosen and taught by Miyoshi to center the handle grip in the middle of the bag to provide a bag that can be more easily pushed in plane cabins or crowded areas while lightly holding the handle grip, as opposed to being firmly held to prevent the bag from turning, as well as to not hinder placement of items within the bag. See Miyoshi col. 2, lines 1-23 and lines 49-55. Miyoshi also notes that such pushable bags are advantageous in that no weight is transmitted to the handle in such a bag, and even a fairly heavy bag can be pushed and moved. See Miyoshi col. 2, lines 5-7.

In contrast, the handle structure of Lu '344 and as presently being claimed relate to towing handles for towable baggage that is generally designed to be pulled behind a user, rather than pushed in front a user as Miyoshi teaches. It is therefore respectfully submitted that one of ordinary skill in the art at the time that the invention was made, using common sense, would not have incorporated the curved rods of Miyoshi that are specifically designed for pushing of the bag, into a towable bag such as that of Lu '344. Looking at the Lu '344 and the Miyoshi disclosures, no apparent benefit of utilizing curved arms in the Lu '344 bag is believed to be apparent, and curving the arms in an opposite direction to that taught by Miyoshi, as the present claims require, conflicts with the actual teaching of the references. It is not believed to be obvious to forsake a clear teaching of the Miyoshi reference and construct exactly what Miyoshi teaches against by reversing the curvature of the handle rods as the present claim invention requires. There is a clear, fundamental incompatibility between the teaching of the Miyoshi reference and the present claims that weighs against any conclusion of obviousness. The Miyoshi disclosure clearly would have placed one of ordinary skill in the art, following its teachings, on a divergent path from the present claims. Applicants therefore request reconsideration and withdrawal of the present obviousness rejection, specifically as it relates to claims 47, 62 and 74.

The combination of Lu'344 and Miyoshi therefore collectively fail to teach all of the recitations of claim 47, and claim 47 is accordingly submitted to be patentable over Lu '344 in view of Miyoshi. When the recitations of claim 48-50 and 52-60 are considered in combination with the recitations of claim 47, claims 48-50 and 52-60 are likewise submitted to be patentable over Lu '344 in view of Miyoshi.

Claims 62-64 and 66-72 depend from claim 61, also submitted to be patentable over Lu '344 for the reasons set forth above. Miyoshi does not disclose a handle movable in any way relative to a distal end of an arm and is therefore submitted to add nothing to the teaching of Lu '344 with respect to claim 61. The references therefore collectively fail to teach all of the recitations of claim 61 and claim 61 is accordingly submitted to be patentable over Lu '344 in view of Miyoshi. When the recitations of claims 62-64 and 66-72 are considered in combination

with the recitations of claim 61, claims 62-64 and 66-72 are likewise submitted to be patentable over Lu'344 in view of Miyoshi.

Claims 78-85 depend from claim 74, and when the recitations of claims 78-85 are considered in combination with the recitations of claim 74, claims 78-85 are likewise submitted to be patentable over Lu '344.

Applicants accordingly request that the rejection of claims 47-50, 52-64, 66-76 and 78-85 be withdrawn.

2. Lu '344 in view of Miyoshi and either Dean or Murphy

The rejection of claims 47-50, 52-64, 66-76, and 78-85 under 35 U.S.C. § 103(a) as being unpatentable over Lu '344 in view Miyoshi and either of Dean (3,335,075) or Murphy (4,368,835) is respectfully traversed.

Applicants again submit that Lu '344 has been properly disqualified as prior art that can be used to reject the claims, and any rejection relying upon Lu '344 is accordingly overcome as a matter of procedure.

Applicants again submit, for the reasons set forth above, that the combination of Lu and Miyoshi does not present a prima facie case of obviousness as they teach against the invention presently claimed. It is further submitted that Miyoshi teaches away from and conflicts with the disclosures of Dean and Murphy such that the references are fundamentally incompatible regarding the curvature of the poles.

Finally, the Lu '344 reference fails to teach a number of aspects of the present claims as explained in Applicant's previous response. Miyoshi, Dean and Murphy fail to cure the deficiencies of Lu '344 with respect to the present claims. In fact, none of Miyoshi, Dean or Murphy disclose a handle movable in any way relative to a distal end of an arm, and consequently none of Miyoshi, Dean or Murphy fairly supplement the teaching of Lu '344 with respect to the handle structures now being claimed. The cited references fail to teach all of the recitations presently being claimed.

Applicants accordingly request that the § 103(a) rejection of claims 47-50, 52-64, 66-76, and 78-85 be withdrawn.

3. Lu '344 in view of Chen '951 or Chen '790

The rejection of claims 51, 65, 77, 86, and 87 under 35 U.S.C. § 103(a) as being unpatentable over Lu '344 in view of Chen (6,591,951) or Chen (6,434,790) is respectfully traversed.

Applicants again submit that Lu '344 has been properly disqualified as prior art that can be used to reject the claims, and any rejection relying upon Lu '344 is accordingly overcome as a matter of procedure.

Applicants note that claims 51, 65, 77, 86, and 87 are all dependent claims, and their respective base claims are submitted to be patentable for the reasons explained above. Chen '790 and Chen '951 are cited in the Office Action for their teaching a single pole constructions, but notably fail to teach other aspects of the present claims. For example, Chen '790 states that hand grip may be swiveled, but fails to describe, illustrate or explain how that might be accomplished, and also fails to disclose any locking feature that would cure the deficiencies of Lu with respect to claims 47, 61, and 74 discussed above. None of Chen '790, Chen '951 or Lu '344 disclose the curvature of the arms recited in claims 47, 62 and 64. It is therefore submitted that these claims are patentable over Lu '344 in view of Chen '951 or Chen '790, and when the recitations of claims 51, 65, 77, 86, and 87 are considered in combination with the recitations of their base claims, claims 51, 65, 77, 86, and 87 are likewise submitted to be patentable.

Applicants accordingly request that the § 103(a) rejection of claims 51, 65, 77, 86, and 87 be withdrawn.

4. Chen '951 in view of Miyoshi and Dean or Lu '344

The rejection of claims 47-60 and 74-86 under 35 U.S.C. § 103(a) as being unpatentable over Chen '951 in view of Miyoshi and Dean or Lu '344 is respectfully traversed.

Applicants again submit that Lu '344 has been properly disqualified as prior art that can be used to reject the claims, and any rejection relying upon Lu '344 is accordingly overcome as a matter of procedure.

Applicants again submit the Miyoshi teaches away from the recitations of independent claims 47 and 74 with respect to the curvature of the arms, and it is therefore submitted that a prima facie case of obviousness has not been established.

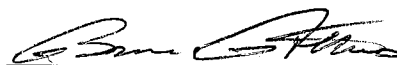
The disclosures of Miyoshi and Dean are submitted to be incompatible with respect to the curvature of the poles such that a prima facie case of obviousness does not exist due to inconsistent and conflicting disclosures of the references regarding certain of the recitations now being claimed.

Applicants accordingly request that the § 103(a) rejection of claims 47-60 and 74-86 be withdrawn.

D. Conclusion

In view of the foregoing amendments and remarks, all the claims now active in this application are believed to be in condition for allowance. Reconsideration and favorable action is respectfully solicited.

Respectfully Submitted,



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